NO. 80-332

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

JAMES A. RHODES, ET AL.,
Petitioners,

V.

KELLY CHAPMAN, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF AMICUS CURIAE STATE OF TEXAS IN SUPPORT OF THE PETITIONERS

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The State of Texas, by and through the Attorney General of Texas, pursuant to Rule 36.4, Rules of the Supreme Court of the United States, respectfully submits this brief as Amicus Curiae in support of the Petitioners.

INTEREST OF THE AMICUS CURIAE

The State of Texas maintains, through the Texas Department of Corrections (TDC), the largest penal system in this country. On April 12, 1974, the Hon. William Wayne Justice, District Judge, United States District Court for the Eastern District of Texas, sua sponte consolidated several individual claims filed by

TDC inmates pro se and ordered the appearance of the United States as amicus curiae in what later became the class action lawsuit of *Ruiz, et al. v. Estelle, et al.*, Civil Action No. H-78-987 (Southern District of Texas, Houston Division, pending).[1] Shortly thereafter, the United States successfully petitioned to intervene as a plaintiff-intervenor in the action, seeking broad relief from conditions of confinement at the TDC which were, allegedly, violative of the Eighth Amendment. *See Estelle v. Justice*, 426 U.S. 925 (1976) (Rehnquist, J., dissenting). Both the United States and the plaintiff class of TDC inmates contended, throughout the trial of this cause, that, *inter alia*, the TDC is unconstitutionally overcrowded.[2] Thus, the State of Texas and its prison system have a direct and substantial interest in the question of the Eighth Amendment standards by which overcrowded prison systems are determined to be in violation of the Constitution.

SUMMARY OF THE ARGUMENT

Notwithstanding the District Court's disavowal, in *Chapman v. Rhodes*, 434 F.Supp. 1007 (S.D.Ohio 1977), of holding double celling unconstitutional per se, and the Sixth Circuit's apparent conclusion that no per se rule has been applied in its summary affirmance of this case, the net result of the District Court and Sixth Circuit decisions is to create a rule of law that double

[1]This case was originally docketed as Civil Action No. 5523 in the Tyler Division of the Eastern District of Texas. Subsequently, it was certified as a class action and transferred to the Houston Division of the Southern District of Texas for trial and re-docketed as Civil Action No. H-78-987.

[2]After several years of discovery, trial commenced on October 2, 1978, and concluded on September 20, 1979, after one hundred and fifty-nine days of presenting testimony, exhibits, expert reports, and other evidence. A total of 349 witnesses testified. While no ruling had been made at the time of preparing this brief, one is expected by the time this brief is filed.

celling is per se violative of the Eighth Amendment. Such a holding is contrary to the reasoning of this Court's prior decisions and a proper reading of the Eighth Amendment.

The Eighth Amendment requires that conditions of confinement not result in the wanton infliction of serious injury. Application of the Eighth Amendment to claims of unconstitutional double celling involves an assessment whether, under the totality of the circumstances, the confinement of two prisoners to a cell of a given amount of space over a given length of time inflicts genuine punishment. The Eighth Amendment is not a vehicle by which the federal courts may legislate the "ideal" or the "preferable" in prison management and conditions. Yet the District Court and the Sixth Circuit have employed a reading of the Eighth Amendment that accomplishes just such a result in this case. Viewing the totality of the circumstances of confinement at the Southern Ohio Correctional Facility (SOCF), there is no wanton infliction of genuine privations and hardships evidenced by the record in this case. Those minor diminishments in services identified by the District Court in its reported decision are not such as to be cognizable under the Eighth Amendment, nor are they the result of double celling.

ARGUMENT

THE COURT BELOW ERRED IN DETERMINING THAT DOUBLE CELLING OF INMATES AT THE SOUTHERN OHIO CORRECTIONAL FACILITY AT LUCASVILLE, OHIO, IS UNCONSTITUTIONAL.

1. The Court Must First Determine That Double-Celled Confinement In A State Prison System Directly Causes Serious Injury To Prisoners Before An Eighth Amendment Violation Can Be Found.

This Court previously has detailed the evolution of the Eighth Amendment's prohibition of cruel and unusual punishment and its application to the States, noting that more recent decisions "have held that the Amendment proscribes more than physically barbarous punishments." *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). Thus, this Court has "held repugnant to the Eighth Amendment punishments which are incompatible with 'the evolving standards of decency that mark the progress of a maturing society,'. . .or which 'involve the unnecessary and wanton infliction of pain'. . ." *Id.*, 429 U.S. at 102-103 (citations omitted). *See also Hutto v. Finney*, 437 U.S. 678, 685 (1978).

Nevertheless, this Court has also recognized that the evolving standards of decency encompass only those "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend 'evolving standards of decency' in violation of the Eighth Amendment." *Estelle v. Gamble, supra*, 429 U.S. at 106.[3] No claim is stated under the Eighth Amendment where the allegation of, for example, medical mistreatment does no more than invite the federal courts to substitute their own medical judgment for that of prison medical officials. *Id.*, 429 U.S. at 106, 107.

As *Gamble* teaches, there must be some serious injury attributable to the condition of confinement made the subject of review under the Eighth Amendment before any constitutional injury can be established. A question of prison design and management philosophy is not, in and of itself, a question for federal court review. As one circuit court has held,

[3]*See Dickson v. Colman*, 569 F.2d 1310, 1311 (5th Cir. 1978); *Twyman v. Crisp*, 584 F.2d 352, 355 (10th Cir. 1978), in which the lower courts have underscored the importance of a serious medical consequence resulting from deliberate indifference in establishing an Eighth Amendment injury under this Court's holding in *Gamble*.

> If the State furnishes its prisoners with reasonably adequate food, clothing, shelter, sanitation, medical care, and personal safety, so as to avoid the imposition of cruel and unusual punishment, that ends its obligations under Amendment Eight. The Constitution does not require that prisoners, as individuals or as a group, be provided with any and every amenity which some person may think is needed to avoid mental, physical, and emotional deterioration.

Newman v. Alabama, 559 F.2d 283, 291 (5th Cir. 1977), *cert. denied*, 438 U.S. 915 (1978).

In the absence of evidence to indicate that serious harm cognizable under the Eighth Amendment is caused directly and unavoidably by the confinement of a prison population of a given size, there is no basis for federal court implementation of recommended goals and idealistic standards which "do not establish the constitutional minima." *Bell v. Wolfish*, 441 U.S. 520, 543 n. 27 (1979). *See also Jones v. North Carolina Prisoner's Labor Union, Inc.*, 433 U.S. 119, 137-138 (Burger, C.J., concurring) (1977). Thus, the Fifth Circuit Court of Appeals recently has rejected the use of such "standards" and recommended population limits, holding that "[a] limitation on the inmate population . . . may be necessary, but the district court should impose such limitation only if the court finds on remand, after a hearing and evaluation of evidence relating to *the totality of conditions* at the jail as they now exist, that the jail is overcrowded and that, considered with all of the other existing conditions, incarceration therein is violative of the prisoners' constitutional rights." *Smith v. Sullivan*, 611 F.2d 1039, 1045-1046 (5th Cir. 1980) (emphasis in original).[4] *See also Spain v. Procunier*, 600 F.2d 189, 194 (9th Cir. 1979).

[4]The Fifth Circuit also cautioned that "the court should take care to establish a sufficient evidentiary basis for any inmate population limit that it decides to order as a result" of its hearing and reevaluation on remand. *Id.*, 611 F.2d at 1046 n. 12.

The State of Texas submits that the proper determination is one where some specific, concrete injury violative of the Eighth Amendment's prohibition of cruel and unusual punishment is found to exist as a direct consequence of overcrowded conditions. On the facts of this case, as in *Bell v. Wolfish, supra*, "[w]hile the practice of double-bunking may have taxed some of the equipment or particular facilities in certain of the common areas, . . . this does not mean that the conditions at the [detention center] failed to meet the standards required by the Constitution." *Id.*, 441 U.S. at 543 (citation omitted).

Certainly, this Court did not review the conditions of confinement at the pretrial detention facility at issue in *Wolfish* under the Eighth Amendment in deciding that, "under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." *Id.*, 441 U.S. at 535. In reserving the Eighth Amendment question "concerning minimum space requirements" for institutions confining convicted felons, this Court did not "decide whether we agree with the reasoning and conclusions" of the District Court in the case sub judice. *Id.*, 441 U.S. at 543 n. 27. However, this Court did decide that, "[w]hile confining a given number of people in a given amount of space in such a manner as to cause them to endure genuine privations and hardships over an extended period of time might raise serious questions under the Due Process Clause as to whether those conditions amounted to punishment, nothing even approaching such hardship is shown by this record." *Id.*, 441 U.S. at 542. There is no question in this case that punishment is proper for those inmates confined at the SOCF, and the standard for constitutional review is to be found under the Eighth Amendment. *Id.*, 441 U.S. at 535 n. 16. The State of Texas submits that, under the Eighth Amendment, the proper determination is whether a given number of people have been confined in a given amount of space in such a manner as to cause

them to endure genuine privations and hardships constituting cruel and unusual punishment.

2. No Injuries Violative Of The Eighth Amendment Are Present In This Case.

In the case sub judice, the District Court found no injuries cognizable under the Eighth Amendment that directly and unavoidably resulted from the double-celled conditions of confinement at the Lucasville facility. The District Court found "no indication whatsoever that prisoners have been underfed or that food facilities have been taxed by the prison population." *Chapman v. Rhodes*, 434 F.Supp. 1007, 1014 (S.D. Ohio, 1977). Nor was it established "that violent incidents have increased out of proportion to the increase in inmate population." *Id.* "[N]o evidence was produced to substantiate" any substantial infringement of the use of visitation facilities. *Id.* Security staffing at the prison was "well within the acceptable ratio." *Id.* 434 F.Supp. at 1015. "No evidence was presented which would demonstrate that the plumbing, lighting, or law library facilities are inadequate to meet the needs of the increased population." *Id.* There was "no increase in violence or criminal activity increase due to double celling." *Id.*, 434 F.Supp. at 1018. The institution itself was "not unusually stuffy or humid," had adequate ventilation, and was not appreciably characterized by "[o]ffensive odors." *Id.*, 434 F.Supp. at 1014. And while the medical staff had not been increased commensurate with the increase in prison population, the District Court found that the situation affecting the provision of medical services "cannot be described as out of hand or the result of indifference." *Id.*, 434 F.Supp. at 1016. The only putatively deleterious effects which the District Court found worthy of mention were a delay in receiving educational opportunities and interference with study habits by inmates attending classes, id., 434 F.Supp. at 1015; the curtailment of psychologist and social worker

services, *id.*, 434 F.Supp. at 1016; and a curtailment of job opportunities for prisoners. *Id.*, 434 F.Supp. at 1015.

The District Court failed to identify any constitutional right to job and educational opportunities -- immediate or otherwise. Nor did the District Court identify any harm to inmates resulting from the curtailment of social worker and psychologist services or the constitutional source for such services. Yet, despite its failure to make such findings and despite findings that show the totality of conditions at the SOCF to be well beyond the reach of the Eighth Amendment's proscription of cruel and unusual punishment, the District Court nevertheless ordered that "the State must proceed with reasonable dispatch to formulate, propose and carry out some plan which will terminate double celling at SOCF." *Id.*, 434 F.Supp. at 1022. The District Court held "overly and on balance that the double celling at Lucasville is unconstitutional" for several reasons. *Id.*, 434 F.Supp. at 1020. The State of Texas submits that these reasons for holding double celling unconstitutional as practiced at the SOCF are insufficient jurisdictionally under a proper reading and application of the Eighth Amendment.

The first reason identified by the District Court is that "[t]he inmates are 'long term,' " and that this "can only accent the problems of close confinement and overcrowding." *Id.* While this Court has expressed its sentiment "that the length of confinement cannot be ignored in deciding whether the confinement meets constitutional standards," this Court also has recognized that "[t]he length of time each inmate spent in [confinement is] simply one consideration among many." *Hutto v. Finney, supra*, 437 U.S. at 686, 687. In the case sub judice the District Court has found, in a conclusory fashion, that whatever problems are attendant to "close confinement and overcrowding," those problems assume a weightier dimension by the fact of double celling. There is no analysis of the record

in this case to support this conclusory finding. Even assuming, arguendo, that the increased population has occasioned a curtailment of counseling services, inmate jobs, and educational opportunities, and that these problems assume a constitutional dimension, these problems are attributable to the change in inmate-staff ratio, and *not* to the fact of double celling. By definition, increases in any population almost invariably create short term reductions in the provision of public services. There is no suggestion on the facts of this case, however, that any such short term reductions have occasioned constitutional injuries.

The District Court also cites among its reasons the fact that SOCF is thirty-eight percent over its design capacity, and that various organizations have recommended a certain minimum of space per inmate which SOCF does not provide. *Chapman v. Rhodes, supra*, 434 F.Supp. at 1020, 1021. The District Court apparently found that confinement in excess of design capacity and in contravention of recommended standards violates "contemporary" standards of decency. *Id.*, 434 F.Supp. at 1021. As this Court has held previously, such standards do not define the minimum standards of the Constitution and, therefore, are not the proof of constitutional injury which is a jurisdictional prerequisite for federal court relief. *Bell v. Wolfish, supra*, 441 U.S. at 543 n. 27. The same reasoning applies to design capacity standards, which are nothing more than *recommendations* as to the ideal size of an inmate population that can be confined in an institution.

The District Court further cites among its reasons the fact that "a prisoner who is double celled will spend most of his time in the cell with his cellmate." *Chapman v. Rhodes, supra*, 434 F.Supp. at 1021. Analyzed against the relief ordered by the District Court that all inmates will be single-celled, this apparently means that a prisoner who spends most of his time in a cell should not, constitutionally, be forced to spend that time with a

cellmate. The District Court has failed to establish any injury resulting, ipso facto, from the confinement of two prisoners to a cell. Indeed, while noting that "the plaintiffs come close to . . . claim[ing] that double celling is per se unconstitutional," *id.*, 434 F.Supp. at 1009, and disavowing any attempt to so find, id., 434 F.Supp. at 1021, the District Court does exactly that by ordering the elimination of double celling in the absence of any injury attributable to the confinement of two prisoners to a single cell.

Finally, the District Court cites among its reasons the fact that, as the prison population in Ohio has continued to increase, "the double celling at Lucasville has done nothing but increase." *Id.*, 434 F.Supp. at 1021. Again, no basis for the decision to eliminate double celling is provided by this reason unless double celling is unconstitutional per se. In fact, the real basis for the District Court's decision to prohibit double celling is found, not among its listed reasons, but earlier in its opinion: "The *preferable* or *ideal* is one prisoner per cell." *Id.*, 434 F.Supp. at 1012 (emphasis added).

3. Assuming The District Court Properly Found Injuries Cognizable Under The Eighth Amendment, The Correct Remedy Is Not The Elimination Of Double Celling.

The constitutional analysis in this and other cases "does not turn on the particulars of the [prison unit] concept or design," but only on the proven unconstitutional effects of confinement. *Bell v. Wolfish, supra*, 441 U.S. at 525. The Eighth Amendment is not a vehicle by which the federal courts may legislate the "preferable" or the "ideal." "Courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility." *Id.*, 441 U.S. at 539. The reported decision of the District Court does not identify any proven constitutional violations, as discussed above.

And, regardless of whether such problems have been identified, single celling "simply is not, however, the only constitutionally permissible approach to these problems." *Id.*, 441 U.S. at 554. This Court has already held that there is no " 'one man, one cell' principle lurking in the Due Process Clause of the Fifth Amendment." *Id.*, 441 U.S. at 542. The State of Texas submits that neither is there any "one man, one cell" principle lurking in the Eighth Amendment's prohibition of cruel and unusual punishment.

Such considerations as whether the District Court has fashioned appropriate relief if constitutional violations were present, however, should not obscure a larger issue before this Court. The District Court, with the acquiescence of the Sixth Circuit, has "trenched too cavalierly" into matters which this Court has traditionally, and properly, reserved for the States. *Bell v. Wolfish, supra*, 441 U.S. at 554. "[U]nder the Constitution, the first question to be answered is not whose plan is best, but in what branch of the Government is lodged the authority to intially devise the plan. This does not mean that constitutional rights are not to be scrupulously observed. It does mean, however, that the inquiry of federal courts into prison management must be limited to the particular issue of whether a particular system violates any prohibition of the Constitution. . ." *Id.*, 441 U.S. at 562. Because the elusive Eighth Amendment standard of "the evolving standards of decency" has not found the kind of definition in prison conditions litigation that it received from this Court in medical mistreatment cases, *see Estelle v. Gamble, supra*, the lower courts in this case, and others, have failed to remain cognizant of this Court's repeated remonstrances that "[t]he wide range of 'judgment calls' that meet constitutional and statutory requirements are confided to officials outside of the Judicial Branch of Government." *Bell v. Wolfish, supra*, 441 U.S. at 562.

CONCLUSION

For the reasons given above, the State of Texas, as Amicus Curiae, urges this Court to reverse the decision of the Court of Appeals for the Sixth Circuit affirming the District Court's judgment and grant the relief requested by Petitioners.

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